

**UNITED STATES DISTRICT COURT**

Northern District of Indiana  
South Bend Division

FOREST RIVER, INC.,  
Plaintiff,

V.

HEARTLAND RECREATIONAL  
VEHICLES, LLC,  
Defendant.

CASE NO.: 3:10-cv-011 TLS-CAN

## JURY DEMAND

# AMENDED COMPLAINT

Plaintiff, Forest River, Inc. (“Forest River”), for its Amended Complaint against Defendant, Heartland Recreational Vehicles, LLC (“Heartland”), hereby alleges and states:

**JURISDICTION and VENUE:**

1. Forest River is a corporation organized under the laws of the State of Indiana, having a principal place of business in Elkhart, Indiana.
2. Heartland is a corporation organized under the laws of the State of Indiana, having a principal place of business in Elkhart, Indiana.
3. This action involves claims arising under the copyright laws of the United States, including Title 17, United States Code §101, et seq.
4. This Court has jurisdiction over the subject matter of the claims pursuant to 28 U.S.C. §1338(a).
5. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b).

**BACKGROUND FACTS:**

**Forest River's Copyright:**

6. Forest River is, among other things, in the business of manufacturing and selling travel trailers.

7. In 2009, Forest River, through its employees who were employed at least in part for that purpose, created a travel trailer floorplan entitled "RP-176." A copy of that floorplan is attached hereto as Exhibit 1.

8. That RP-176 Floorplan was an "original work" within the meaning of the copyright laws. The RP-176 Floorplan was based in part upon prior floorplans of other Forest River travel trailers. However, the RP-176 Floorplan includes significant additional original material, including the Kitchen Slide-out, Ent. Ctr., and Storage Bunk sections, as well as the orientation and sizing of all of its sections. Accordingly, the RP-176 Floorplan is copyrightable subject matter under the laws of the United States.

9. The RP-176 Floorplan was published by Forest River within the United States as a two dimensional visual artwork and as a technical drawing, within the meaning of the copyright laws. The RP-176 Floorplan was published in 2009 as a contribution to a larger work entitled "R.Pod Proudly Introduces Two Exciting "New" Floorplans!!!"

10. Forest River is the exclusive owner of all copyrights in the RP-176 Floorplan.

11. Forest River applied for copyright registration of the RP-176 Floorplan with the United States Copyright Office, delivering all of the required the deposit material, application, and fee. That registration application was received by the United States Copyright Office. Forest River's legal rights of copyright registration are presently in effect.

**Heartland's Actions in Violation of Forest River's Copyright:**

12. Heartland is in the business of manufacturing and selling travel trailers. Heartland is and has been at least since 2005 a competitor of Forest River. Heartland sells its travel trailers to dealers, at least some of whom are also dealers of Forest River travel trailers.

13. Heartland became aware of the RP-176 Floorplan in 2009 and obtained a copy of that floorplan.

14. Afterwards, Heartland copied the RP-176 Floorplan into its advertisements for competing travel trailers. Heartland created derivative floorplans based on the RP-176 Floorplan and made travel trailers derived from that copied floorplan. Heartland used those advertisements and derivative floorplans to solicit business from dealers of Forest River travel trailers and from others.

15. A copy of one of those advertisement is attached hereto as Exhibit 2. This exhibit also shows the derivative floorplan, marked as an "MPG" travel trailer made by Heartland. Heartland distributed the advertisement of Exhibit 2 to potential customers, including travel trailers dealers, at the RVIA trade show in Louisville, KY in December 2009, together with other advertisements of its MPG product which were intended to confuse and/or deceive customers into thinking about some connection with Forest River.

16. On December 23, 2009, Forest River informed Heartland's attorney, David Imscher, that Heartland was infringing upon Forest River's copyright in the RP-176 Floorplan and other legal rights. On December 30, 2009, Forest River provided documentation of that infringement to Mr. Imscher. On January 7, 2010, Forest River delivered a copy of the Complaint to Mr. Imscher. No response has been provided by Heartland, and Heartland has not ceased infringing upon Forest

River's copyright in the RP-176 Floorplan.

17. Heartland provided copies of the advertisement of Exhibit 2 to its travel trailer dealers, knowing and intending that those dealers would use that advertisement to attempt to sell MPG brand travel trailers made by Heartland in competition with Forest River's R.Pod travel trailers. Heartland's dealers did use the advertisement of Exhibit 2 to attempt to get such sales. One example of that use by a dealer is shown in Exhibit 3, a portion of a Heartland dealer internet web site. Heartland obtained direct financial gain from such sales and offers for sale by its dealers.

18. Heartland distributed copies of the advertisement of Exhibit 2 to its dealers, knowing and intending that those dealers would copy, publicly display, and distribute that advertisement. Heartland's dealers did so copy, publicly display, and distribute that advertisement, including via the internet as shown in Exhibit 3.

19. Heartland knowingly and intentionally induced, caused, and materially contributed to the copying, displaying, and distribution of the advertisement of Exhibit 2 by RV dealers. That action would not have occurred without Heartland's assistance. Heartland did so with the specific intent and result of monetary gain for Heartland and those dealers.

20. Forest River has suffered legally cognizable harm from these actions by Heartland and its dealers in connection with copying, displaying, distributing, and using the advertisement of Exhibit 2. Forest River has attempted to mitigate the damage caused by Heartland's actions by requesting at least one Heartland dealer to remove the advertisement of Exhibit 2 from internet publication and display. At least one dealer, Wholesale RV Club, complied with that request, as is shown by comparison of Exhibit 3 with that dealer's current internet publication, [www.wholesalervclub.com/2011-heartland-rv-mpg-183-OH-i126020](http://www.wholesalervclub.com/2011-heartland-rv-mpg-183-OH-i126020). However, Heartland has

failed to inform Forest River of the identity of the other dealers who have been copying, displaying, and/or distributing the advertisement of Exhibit 2, and, accordingly, Forest River has been unable to arrange for cessation of such actions voluntarily by those dealers.

**CLAIMS AGAINST HEARTLAND:**

21. Heartland has infringed upon Forest River's copyrights in the RP-176 Floorplan in violation of the laws of the United States, and continues to do so, causing irreparable harm to Forest River. Heartland has contributed to and induced the infringement of Forest River's copyrights in the RP-176 Floorplan by various RV dealers. Heartland has also engaged in unfair trade practices and unfair competition in connection with its publication of infringing advertisements and sale of infringing travel trailers.

22. Heartland's direct, contributory, and inducing infringement of Forest River's copyrights have been deliberate, willful, and with malice.

**JURY DEMAND:**

Forest River requests that those issues that could be tried by a jury be so tried.

**RELIEF SOUGHT:**

Forest River respectfully requests this Court enter Judgement against Heartland and:

A. Preliminarily and permanently enjoin Heartland, including all persons controlling or acting in concert therewith, from infringing upon Forest River's copyright in the RP-176 Floorplan.

B. Require an accounting from Heartland for all revenue received from infringing upon

Forest River's copyright in the RP-176 Floorplan and all profits and advantages gained from the unfair competition and unfair trade practices of Heartland;

C. Require payment from Heartland to Forest River for all damages sustained by Forest River as a result of Heartland infringing upon Forest River's copyright in the RP-176 Floorplan;

D. Require payment from Heartland to Forest River for all attorney fees and costs in this litigation;

E. Assess heightened damage payment from Heartland to Forest River on account of Heartland's willful misconduct;

F. Order the seizure and destruction of all infringing products wherever located in the stream of commerce; and

G. Grant and award Forest River all such other relief as is necessary and appropriate.

Dated: March 2, 2010

Respectfully submitted,

s/Ryan M. Fountain

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ATTORNEY FOR PLAINTIFF

Certificate of Service:

I certify that a copy of the foregoing document was served upon the Defendant in this case by depositing that copy with the United States Postal Service for delivery via First Class mail, postage pre-paid, on March 2, 2010, addressed for delivery to the following counsel for that party:

David P. Irmischer  
Baker & Daniels  
111 East Wayne, Suite 800  
Fort Wayne, IN 46802

A courtesy copy was also sent on this date via email.

s/Ryan M. Fountain

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Ryan M. Fountain